Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
02906.0357-00000

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/696,736	October 30, 2003

First Named Inventor: Patrick R. LANCASTER, III

Art Unit	Examiner
3651	Prakasam, Ramya G.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☐ attorney or agent of record.
Registration number _____.

☒ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 61,539

Signature

Thomas Y. Ho
Typed or printed name

(202) 408-4420
Telephone number

February 11, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT
Customer No.: 22,852
Attorney Docket No.: 02906.0357

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Patrick R. LANCASTER, III et al.	)	Group Art Unit: 3651
	)	
Application No.: 10/696,736	)	Examiner: Prakasam, Ramya G.
	)	
Filed: October 30, 2003	)	
	)	
For: METHOD AND SYSTEM FOR BUILDING A LOAD	)	Confirmation No.: 6347
	)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests a pre-appeal brief review of the final Office Action mailed October 9, 2007, the reply period having been extended to February 11, 2008 (February 9, 2008 falling on a Saturday) by a one-month Petition for Extension of Time and fee payment filed herewith. This request is being filed concurrently with a Notice of Appeal.

Status of the Claims

In the final Office Action, claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,098,254 to Becicka et al. ("Becicka"); and claims 32, 45, 51-53, 66, 72-74, 174-180, 182-187, 189-194, 196-199, and 201 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Becicka.

Anticipation Rejection

Applicant respectfully requests withdrawal of the rejection of claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 under 35 U.S.C. § 102(b) as being anticipated by Becicka.

Applicant submits that Becicka does not teach every element of those claims, and thus, the rejection cannot be maintained. See M.P.E.P. § 2131.

Becicka discloses a palletizer 10 that includes a Y-axis assembly 18; a hand assembly 20 for grasping rows of cartons 12, hand assembly 20 being mounted to an extendable end 22 of Y-axis assembly 18; and a carriage 24 that moves Y-axis assembly 18 vertically along a vertical support column 16 . *See* Becicka, column 2, lines 16-25 and 32-34. Palletizer 10 also includes adjustable limit switches 32 and 42, first and second photodetectors 56 and 58, and first and second proximity detectors 62 and 64 ("switches and detectors"). *See Id.* at column 2, lines 42 and 57; and column 3, lines 12, 17, 50, and 56. However, Becicka does not use the switches, photodetectors, or proximity detectors to define an area to be filled, or to determine when an area is filled, as alleged on page 3 of the final Office Action.

First, it is not apparent how the switches and detectors in Becicka could possibly define a horizontal area to be filled by a layer of cartons 12, and determine when that area has been filled. Palletizer 10 builds the first layer by placing the first row of cartons 12 (the bottom right row in FIG. 1) with the help of limit switches 32 and 42, then placing the next two rows (the bottom middle and the bottom left rows in FIG. 1) with the help of limit switch 32 and proximity detector 64, with each subsequent row being placed closer to vertical support column 16 than the one before. *See Id.* at column 4, lines 47-66; column 5, lines 1-8; and FIG. 1. However, none of the switches and detectors is placed so as to define the position of the left edge of pallet 14 (the edge closest to vertical support column 16 in FIG. 1), or determine when the left edge has been reached by cartons 12.

Along those same lines, it is not apparent how the switches and detectors in Becicka could define a vertical area to be filled by all of the layers of cartons 12, and determine when that area has been filled (i.e., when the load is completed). Palletizer 10 builds the load from the bottom

layer up. *See Id.* at column 5, lines 9-25. However, none of the switches and detectors is placed so as to define a load height or fill limit, or otherwise determine when such limit has been reached by the top layer of cartons 12. Thus, the switches and detectors are not used to define the area to be filled, or determine when the area has been filled.

If the switches and detectors in Becicka are not used to define the area to be filled, or determine when an area is filled, then how does palletizer 10 know when to stop? Becicka clearly states that "[p]rogramming of the control system involves entering various predetermined operational data, such as the number of the cartons 12 per row; the orientation of each of the cartons 12 within the row, spacing (per user requirements) between the adjacent cartons 12 within the row and the total number of the cartons 12 in a layer, or in a fully loaded form of the pallet 14." *Id.* at column 4, lines 30-36. In other words, the total number of cartons 12 for a full load is predetermined operational data that is programmed or entered into the control system, and is not defined and determined using the switches and detectors.

Thus, while the switches and detectors in palletizer 10 may assist with filling an area with cartons 12, those switches and detectors do not define the area to be filled, or determine when that area has been filled. That information is programmed into the control system. Accordingly, Becicka fails to teach "defining a desired area of a load to be filled with product using at least two of a height sensor, a length sensor, and a width sensor . . . and determining when the desired area is filled using at least two of the height sensor, the length sensor, and the width sensor," as recited in independent claim 24.

Independent claims 48, 67, and 173, while of different scope from independent claim 24, each recite similar features. Thus, Becicka fails to anticipate independent claims 48, 67, and 173 for at least reasons similar to those discussed above with respect to independent claim 24.

Obviousness Rejection

Applicant respectfully requests withdrawal of the rejection of claims 32, 45, 51-53, 66, 72-74, 174-180, 182-187, 189-194, 196-199, and 201 under 35 U.S.C. § 103(a) as being unpatentable over Becicka. Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to those claims. See M.P.E.P. § 2143.

As discussed above, Becicka fails to teach or suggest each of the limitations in independent claims 24, 48, and 67, from which claims 32, 45, 51-53, 66, and 72-74 depend. Therefore, claims 32, 45, 51-53, 66, and 72-74 are allowable at least for the same reasons that independent claims 24, 48, and 67 are allowable.

Independent claims 174, 178, 182, 189, 196, and 201, while of different scope from independent claim 24, each recite similar features. Thus, Becicka fails to anticipate independent claims 174, 178, 182, 189, 196, and 201 for at least reasons similar to those discussed above with respect to independent claim 24.

Independent claim 176 recites, *inter alia*, "[a] method comprising . . . automatically repeating the moving and depositing steps by repeating a single logic sequence for at least two consecutive moving and depositing steps; wherein the first moving and first depositing steps load a first product having a first size onto the load, and wherein the second moving and second depositing steps load a second product having a second size different from the first size onto the load." Becicka only shows items of a single size in the load shown in FIG. 1. Further, palletizer 10 would not work if differently sized cartons 12 were to be used, since proximity detector 62 operates on the assumption that the layers have a single height. *See Id.* at column 5, lines 9-19. For at least these reasons, Applicant submits that independent claim 176 is allowable.

Independent claim 201, while of different scope from independent claim 176, recites similar features. Thus, Becicka fails to render claim 201 obvious for at least reasons similar to those discussed above with respect to independent claim 2176.

Claims 25-31, 38, 43, 44, 46, 47, 49, 50, 54, 62, 65, 68-71, 83, 86, 175, 177, 179-181, 183-188, 190-195, 197-200, and 202, each depend from one of independent claims 24, 48, 67, 173, 174, 176, 178, 182, 189, 196, and 201, and are allowable for at least the reasons stated above that independent claims 24, 48, 67, 173, 174, 176, 178, 182, 189, 196, and 201 are allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable.

Applicant requests that withdrawn claims 181, 188, 195, 200, and 202 be rejoined with the elected claims in this application. Claims 181, 188, 195, 200, and 202 all depend either directly or indirectly from one of independent claims 174, 176, 178, 182, 189, 196, and 201, and thus, are allowable for at least the same reasons that independent claims 174, 176, 178, 182, 189, 196, and 201 are allowable. In addition, each of these withdrawn dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable.

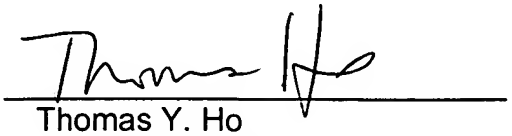
Conclusion

In view of the above, Applicants request that the rejection of these claims be withdrawn and the claims allowed.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 11, 2008

By: 
Thomas Y. Ho
Reg. No. 61,539